In finding the defendant did publish the slander, I do not say that there was any truth in it, for I am entitled to proceed on the basis that —

" ..... a person making a communication on a privileged occasion has not, in the first instance and as a condition of immunity, to prove affirmatively that he honestly believed the statement made to be true, his *bona fides* being in such a case always presumed....." (*per* Lord Atkinson in *Adam* v. *Ward* (4) at page 334).

I hope that this is some consolation to the plaintiff.

Claim dismissed.

Solicitors: *Jag-Jit Singh; Shearn, Delamore & Co.*

BAKER v. ASIA MOTOR CO. LTD.

[O. C. J. (Buttrose J.) October 19, 1962]

[Singapore — Civil Suit No. 311 of 1962]

Contract — Representation — Whether term of contract — Whether representation fraudulent — Measure of damages.

Contract — Sale of car — Misrepresentation of year of manufacture — Entries in registration book that should have put defendants on enquiry — Whether defendants' representation of year of manufacture amounted to fraudulent misrepresentation — Damages.

The plaintiff who had purchased a second-hand 1956 Fiat from the defendants approached them with a view to effecting an exchange as the Fiat gave considerable trouble. He was shown a list of second-hand cars by the defendants. Among the cars were two Humber Hawks. The defendants' salesman pointed to one of the Humber Hawks and said that he recommended that car and that it was a much better and newer car than the Fiat. After a trial run the plaintiff on request was shown the registration book of the car. At the top of the card appeared the words "Late T.5364" which would indicate to anyone in the motor trade but not the plaintiff that the car was not a 1958 model and had previously been registered in the Federation of Malaya. The plaintiff then agreed to buy the car for $2,400 and signed a formal confirmation of purchase incompletely filled in and not signed by the defendants. Subsequently on December 31, 1960 a hire-purchase agreement in respect of the car was executed describing "the goods" as a 1958 Humber Hawk Saloon. Some time later on discovering that the car was a 1953 model he brought an action against the defendants for damages for breach of contract or alternatively damages for fraudulent misrepresentation.

Held: (1) as the agreement was for the supply of a 1958 model and the car supplied was a 1953 model there was an express breach of the term of the contract;

(2) the representation made by the defendants was fraudulent because it was made without belief in its truth, recklessly, careless whether it be true or false;

(3) the plaintiff was entitled to the difference between the price actually paid by him, namely, $2,400 and the price which he would have paid for a 1953 model, namely $1,200.

Dicta of Lord Herschell in *Derry* v. *Peek* (2) at page 374 applied. *Oscar Chess Ltd.* v. *Williams* (1) distinguished.

Cases referred to:—

(1) *Oscar Chess Ltd.* v. *Williams* [1957] 1 All E.R. 325.

(2) *Derry* v. *Peek* (1889), 14 App. Cas. 337.

CIVIL SUIT.

M. Coomaraswamy for the plaintiff.

L. A. J. Smith for the defendants.

Cur. Adv. Vult.

Buttrose J.: This action arises out of the sale of a second-hand motor car by the defendants to the plaintiff under a hire-purchase agreement. The plaintiff claims damages for breach of the agreement by the defendants alternatively damages for fraudulent misrepresentation by the defendants in inducing the plaintiff to enter into it.

The position was that the defendants admitted that they represented that the motor car was a 1958 model and that it was not a 1958 model — it was in fact a 1953 model — but they denied that they knew it was not a 1958 model and that the said representation was made fraudulently or recklessly. They maintained that the representation was based upon an entry in the registration book to that effect and made with a *bona fide* belief in the truth thereof.

The first question which arises to be considered is whether the representation made by the defendants was a term of contract. The question is often expressed as being whether the words are to be interpreted as giving rise to a warranty.

The facts were that the plaintiff in October, 1960, about a month after his arrival in Singapore purchased a second-hand 1956 Fiat from the defendants. He experienced considerable trouble with it and soon afterwards approached the defendants with a view to effecting an exchange. He was shown a list of second-hand cars which, however, was not produced and referred to a salesman employed by the defendants and they had a discussion. The plaintiff indicated two Humber Hawks on the list in which he was interested and it appeared, though the evidence was somewhat vague as to this, that they were shown as 1957/1958 models. The salesman pointed to one of the Humber Hawks and said that was the car he recommended. The plaintiff referred to the trouble he had experienced with the Fiat and stated that he wanted a good car this time and the salesman said that he would see to it that the plaintiff was satisfied.

The plaintiff queried the price indicating that he did not want to pay as much as he had done for the Fiat and the Humber Hawk was more expensive to which the salesman replied that it was a much better and a much newer car. The plaintiff inspected the car with the salesman and they went for a run in it. On their return the plaintiff said that before he went any further in the matter he would require to see the log book to ascertain who the previous owners were and the log book was produced for his inspection. The plaintiff agreed to buy the car and signed a formal confirmation of purchase incompletely filled in and not signed by the defendants and subsequently on the 31st December, 1960, executed a hire-purchase agreement in respect of the

car and took delivery. In this agreement under the heading "The Goods" the car is expressly stated to be a 1958 model Humber Hawk Saloon. It was only on his attempting to resell the car some time later, as his family were returning to England, that the plaintiff discovered that it was in fact a 1953 model. He immediately went and saw the defendants and was told that it was nothing to do with them and that, while it may well be a 1953 model, as the log book said it was a 1958 model that was the end of the matter as far as the defendants were concerned.

The plaintiff said that if he had known it was a 1953 model he would never have bought it and that he knew nothing about Humber Hawks and he believed the defendants when they told him it was a 1958 model.

Now the assumption that the car was a 1958 model was fundamental to the contract but as was pointed out by Denning L.J. in *Oscar Chess Ltd.* v. *Williams* [1] at p. 327 that does not prove that the representation was a term of the contract.

The assumption in that case was based by both the parties on the date given in the registration book as the date of first registration. They both believed that the car was a 1948 model, whereas it was only a 1939 one. They were both mistaken. The facts in the present case are, in my opinion, clearly distinguishable. The plaintiff asked to see the log book merely to ascertain who the previous owners were. The defendants based their representation that the car was a 1958 model on an entry in the log book but from the defendants' point of view as motor traders and dealers in second-hand cars the log book on the face of it cried out for investigation. It is true that the year of manufacture is given as 1958, but in view of the other entries that date should have been immediately suspect to any motor car salesman or indeed any one connected with the motor trade. The date of original registration is given as two separate dates, one on 30/4/57 and the other on 27/5/58. At the top of the card there appears the following "Late T 5364" which would indicate to any one in the motor trade, but not the plaintiff, that the car was not a 1958 model and had previously been registered in the Federation of Malaya and that the original log book had been changed. The car in question was in fact sold on the 14th August, 1953, to the Sultan of Kelantan and the original registration card showing this is in the Singapore Registrar of Vehicles file and the information is easily obtainable on enquiry from that department. Furthermore, the defendants had the car in stock for four months prior to the sale to the plaintiff and had ample time to make the enquiries which were so obviously required.

The evidence of the sales manager of Lyons Motors, Mr. Murphy, which I accept, was that he would not assume the car was a 1958 model by looking at the registration book — he would say it was not a 1958 model for the reasons which I have already mentioned. It was unlikely too, in his opinion, that Singapore Motors Ltd., who are not the agents for Humber Hawk cars, would register a new Humber Hawk. It is not unworthy of note that Singapore Motors Ltd. in their application to register and license the car in May, 1958, gave the year of manufacture as 1954.

In this case there was an agreement for the supply of a 1958 model Humber Hawk and the car supplied was of a 1953 model. There has been, in my view, a breach of an express term of the contract. That is sufficient to dispose of the case in favour of the plaintiff, but I think I should deal very briefly with the further issue of fraud.

Now, in addition to the matters to which I have already referred, it was clearly established that the 1958 model Humber Hawk was introduced in Singapore in November or December, 1957, and it represented a complete change in body design and appearance from the previous models. The 1953 and 1958 models are entirely different in appearance and any car salesman would and should be well aware of the fact. A glance at the Humber Hawk sold to the plaintiff would indicate to any one connected with the motor trade, but not the plaintiff, that it could not possibly be a 1958 model. The general manager of the defendant company admitted that the defendants might have known the car was a 1953 model. The salesman who sold the car to the plaintiff was not called by the defendants.

To prevent a false statement being fraudulent there must in the words of Lord Herschell in *Derry* v. *Peek* [2] at p. 374 always be an honest belief in its truth. For the reasons I have stated, I have come to the conclusion that the representation was made without belief in its truth, recklessly, careless whether it be true or false. The plaintiff has, in my view, established a case of fraud against the defendants and on that ground also is entitled to succeed.

The measure of damages is the difference between the price actually paid by the plaintiff, namely, $2,400 and the price which he would have paid for a 1953 model, namely, $1,200.

In the result there must be judgment for the plaintiff for $1,200 and costs.

Judgment for the plaintiff.

Solicitors: *Rodyk & Davidson; L. A. J. Smith.*